IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 215 OF 1995

Ashok Murlidhar Sarawade,
Aged 44 years, shop-Inspector,
Residing at Khopoli-Tk,
Khalapur, Dist. Raigad ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. Dundappa B. Patil, Adv. for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 28TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. original accused has challenged the judgment and order dated 26.4.1995 passed by the learned Special Judge Raigad-Alibag in Special Case No. 1 of 1988. By the said judgment and order the learned Special Judge convicted the appellant under Section 161 of I.P.C. and under Section 5(1) (d) read with Section 5(2) of Prevention of Corruption Act, 1988. The learned Special Judge sentenced the appellant to R.I. for one year and to pay a fine of Rs.500/- i/d S.I. for three months on each count. The

learned Special Judge further directed that the substantive sentences shall run concurrently.

2. The prosecution case briefly stated is as under:-

. That the complainant P.W.1 Shyam Nilkanth Athavale was residing at Khopoli. His mother was running a catering business by name of Shriram Caterers. His mother told him that the said business is to be stopped and the business is to be transferred in the name of the minor son of the complainant. Hence, the complainant filed an application under the signature of his mother for closure of the business namely Shriram Caterers and starting the business in the name of Shalimar Caterers. After 3/4 days he went to the Municipality and made enquiry with the appellant who was the Shop Inspector at the relevant time, about the licence. The appellant told him to come after one and half month as he had got other work.

. On 13.2.1986 at about 3.30 p.m. the complainant went to the office of the appellant and asked him about licence. Appellant took out the application given in the name of the mother of the complainant and asked the complainant whether he had brought the amount of fees. The complainant told him he

had brought the amount of Rs.15/-, whereupon, the appellant told him that the amount is not sufficient and his fee is Rs.100/-. The complainant told him that he did not have Rs.100/-, whereupon the appellant asked him to bring Rs.100/- on Monday after 2.00 p.m. Pursuant to this demand, on 14.2.86 the complainant had been to the Anti Corruption Bureau Office and met P.W.4 Dy. S.P. Chache and informed him this fact. Thereafter, his complaint (Exh.13) came to be recorded. P.W.4 Chache told him to come at Government Rest House at 10.30 a.m. alongwith Rs.100/- on 17.2.1986. After following the pre-trap formalities the raiding party went to the office of appellant. The complainant alongwith his wife and P.W.2 Ravindra Mhatre entered into the office of the appellant, the appellant took out the complainant's form and asked the wife of the complainant to put her signature on the form. Then the appellant asked the complainant whether he had brought the amount of Rs.100/- of his fees. Thereupon, the complainant took out currency notes of the amount of Rs.100/- and told the appellant that it is an amount of Rs.100/- of his fees. The appellant accepted the said amount and kept it in the pocket of his pant. Thereafter, the complainant gave signal to the raiding party and the members of the raiding party reached there and entered into the

office of the appellant. Thereafter, all post trap procedure came to be carried out. Thereafter, the complaint of P.W.4 Chache came to be recorded. After completion of investigation charge sheet came to be filed.

3. In due course the case was committed to the Special Court. Charge came to be framed against the appellant under Section 161 of I.P.C. and under Section 5(1) (d) r.w. section 5(2) of the Prevention of Corruption Act, 1988. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that the mother of the complainant had renewed her licence at a late stage and on account of the delay in renewing the licence, the appellant had issued notice to the mother of the complainant. Thereafter, the appellant has submitted his report to Standing Committee to prosecute the mother of the complainant. Because of this the complainant filed false case against the appellant.

4. During the course of trial, the prosecution has examined in all four witnesses. P.W.1 Shyam Nilkanth Athawale who is the complainant, P.W.2 Shri. Ravindra Mhatre, P.W.3 B.G. Sakhare who is the sanctioning authority and P.W.4 Shri. R.T. Chache who is the investigating Officer. After

going through the evidence adduced by the prosecution, the learned Special Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

5. I have heard Shri. D.B. Patil, the learned advocate for the appellant and Shri. Shitole, the learned A.P.P. for the respondent-State. I have also perused the record pertaining to the present case. After utmost circumspection, I have reached the conclusion that this appeal deserves to be allowed.

6. The conviction of the appellant is mainly based on the evidence of the complainant i.e. P.W.1 Shyam Athawale. The complainant has stated that initially his father was running business known as Shriram Caterers at Khopoli. After the death of his father, his mother was running the said business. Thereafter, his mother told him that the said business is to be stopped and the business is to be transferred in the name of the son of the complainant. According to the complainant he filed an application under the signature of his mother for closure of business i.e. Shriram Caterers and starting the business in the name of Shalimar Caterers in the name of his son. After 3/4 days, complainant went to the Municipality and made

enquiry with the appellant about the licence, the appellant told him that his work will take about one and half months. Thereafter, on 13.2.86 the complainant went to the office of the appellant and asked him about the licence. Appellant took out the application given in the name of the mother of the complainant and asked the complainant whether he had brought the amount of fees. The complainant told him he had brought the amount of Rs.15/-, whereupon, the appellant told him that the amount is not sufficient and his fees is Rs.100/-. The complainant told him that he did not have Rs.100/- whereupon the appellant asked him to bring Rs.100/- on Monday after 2.00 p.m. Pursuant to this demand, on 14.2.86 the complainant had been to the Anti Corruption Bureau Office and met P.W.4 Dy. S.P. Chache and informed him this fact. Thereafter, his complaint (Exh.13) came to be recorded. P.W.4 Chache told him to come at Government Rest House at 10.30 a.m. alongwith Rs.100/- on 17.2.1986. After following pre-trap procedure raiding party waited near the office of appellant. The complainant alongwith P.W.2 Ravindra Mhatre entered into the office of the appellant, the appellant took out the complainant’s form and asked the wife of the complainant to put her signature on the form. Then the appellant asked the complainant whether he had brought the amount of Rs.100/- towards his fees.

Thereupon, the complainant took out currency notes of the amount of Rs.100/- and told the appellant that it is an amount of Rs.100/- as his fees. The appellant accepted the said amount and kept it in the pocket of his pant. Thereafter, the complainant gave signal to the raiding party and the members of the raiding party entered into the office of the appellant. Thereafter all post trap formalities came to be carried out.

7. As per the evidence of the complainant he visited the office of the appellant for the first time somewhere in the beginning of January, 1986. On that day, admittedly no demand was made by the appellant and the demand was made on the second time when the complainant visited the office of the appellant on 13.2.86. From the evidence of the complainant, in the examination in chief which has been discussed above, it appears that a demand was made by the appellant to the complainant of Rs.100/-. However, in his cross examination the complainant has clearly admitted that the appellant did not demand bribe amount at the time of his second visit. In view of this admission in the cross examination, the earlier evidence of complainant that the appellant made a demand of Rs.100/- from him on 13.2.86 gets washed away.

8. Thereafter, it is only on 17.2.86 i.e. on the date of raid that the complainant went to the office of the appellant. As far as the incident of 17.2.86 is concerned, the complainant has stated that the appellant asked him whether he had brought the amount of Rs.100/- of his fees. However, this is an improvement in the evidence of complainant. As this fact does not find mention in his statement before the police. So also the complianant has stated that he took out currency note of Rs.100/- and told the appellant that this amount of Rs.100/- is of his fees. This statement is also found to be an improvement. Moreover, the complainant has admitted in para 20 of his cross examination that the appellant did not ask him to give the amount. Looking to all the evidence on record, it cannot be said that the prosecution has conclusively and reliably proved that a demand was made by the appellant and he accepted Rs.100/- pursuant to the said demand. In the present case, the evidence of the complainant is not found trustworthy and reliable. As far as the evidence of P.W.2 i.e. R.R. Mhatre is concerned, there are various contradictions in the evidence of this witness and that of the complainant. In such case, I do not find it safe to rely on the evidence of this witness also.

9. For the said reasons, I am of the opinion that this is a fit case wherein the appellant should be extended the benefit of doubt.

10. In the result, this appeal is allowed. The conviction and sentence of the appellant for the offence under section 161 of I.P.C. and Under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1988 is set aside and the appellant is acquitted therein. Fine amount, if any, paid by the appellant, be refunded to him. Appellant is on bail, his bail bond shall stand cancelled.

11. Criminal appeal is allowed.